

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE WORLD TRADE CENTER DISASTER	:	<b><u>ORDER ACCEPTING REPORT OF</u></b>
SITE LITIGATION	:	<b><u>SPECIAL COUNSEL AND PROVIDING</u></b>
-----	:	<b><u>FOR EFFECTIVENESS OF</u></b>
IN RE LOWER MANHATTAN DISASTER	:	<b><u>SETTLEMENT</u></b>
SITE LITIGATION	:	
-----	:	21 MC 100 (AKH)
IN RE COMBINED WORLD TRADE CENTER	:	21 MC 102
AND LOWER MANHATTAN DISASTER SITE	:	21 MC 103
LITIGATION	:	
-----	x	
ALVIN K. HELLERSTEIN, U.S.D.J.:		

I conducted a hearing on December 22, 2010, to consider and regulate two issues necessary to be resolved to consummate the Affirmation of Final Settlement as provided by § XXII of the Settlement Process Agreement, As Amended ("SPA"): (1) the report by the Special Counsel, appointed by my Order of November 24, 2010, concerning the intentions of persons on the Eligible Plaintiffs List ("EPL") of the SPA (a) to enter into the settlement, (b) to opt out of the settlement and to continue with their cases, or (c) to dismiss their cases, or have their cases dismissed, with prejudice; and (2) issues to be resolved prior to the Parties' readiness to execute the Affirmation of Final Settlement Agreement. After hearing the parties, I rule as follows:

1. The written report of the Special Counsel, Michael Hoenig, Esq., and Herzfeld & Rubin, P.C., is accepted and ordered to be filed. The report is attached as Exhibit D to this Order. Mr. Hoenig's conclusions are the subjects of the rulings that follow.
2. The Special Counsel communicated, and exerted best efforts to communicate, with 546 Eligible Plaintiffs, as defined and identified by the SPA, who had not expressed an intention regarding the settlement. This pool included all individuals who had voluntarily

dismissed their claims pursuant to Federal Rule of Civil Procedure 41 prior to his appointment. The Special Counsel's efforts have produced the following results:

- a. 45 Plaintiffs have stated their intentions to be added to the list of Plaintiffs opting into the settlement. The Special Counsel has provided this information to Plaintiffs' regular counsel, and I am advised that Plaintiffs' regular counsel have transmitted the appropriate paperwork for these Plaintiffs to counsel for the WTC Captive Insurance Company, who have included these Plaintiffs in the settlement.
- b. 29 Plaintiffs opted out of the settlement with the intention to continue with their cases. These 29, and the approximately 123 others who previously expressed their intentions to continue with their cases, will be the subjects of a status conference I have scheduled to be held February 2, 2011, at 2:15pm.
- c. 48 plaintiffs asked that their cases be dismissed. All 48 were made aware that all dismissals would be with prejudice, by Court Order. Their cases are being dismissed with prejudice by separate Order pursuant to Federal Rule of Civil Procedure 41(a)(2).
- d. 409 Plaintiffs could not be found, or failed or refused to respond to their lawyers' efforts, and to Special Counsel's efforts to locate and communicate with them. By failing to maintain communications and provide instructions to their attorneys, despite numerous efforts by their lawyers and the Special Counsel whom I appointed, they have failed purposefully and intentionally to prosecute their cases. Their cases are being dismissed with prejudice by separate Order pursuant to Federal Rule of Civil Procedure 41(b). Consistent with the terms of the dismissal

Order, any motion by these Plaintiffs to reinstate their cases, pursuant to Federal Rule of Civil Procedure 60(b), must be made within 30 days of this Order.

- e. 13 individuals presently named as Plaintiffs are deceased, which has led to additional complexities involving the status of their cases. The Special Counsel is presently working to solve the issues arising in these cases, and a report on his progress shall be provided to the Court in due course. These cases shall remain open for the time being.

- 3. A Plaintiff whose case is dismissed with prejudice is to be removed from the EPL.

Accordingly, the Plaintiffs dismissed pursuant to this order and the companion orders also issued today, 457 in number, are to be subtracted from the EPL. See SPA § VI.A.

- 4. Although counted among the settling Plaintiffs, some Plaintiffs have had deficiencies in their individual settlement documents, and the parties have been working to clear up these deficiencies to ensure a complete release and an initiation of settlement payments.

These Plaintiffs are subject to the following orders.

- a. 52 Plaintiffs, including Derivative Plaintiffs, although clearly expressing their intention to settle and to release and not to sue Defendants in accordance with the SPA, have done so by documents containing various imperfections. A list of these Plaintiffs is attached as Exhibit A – Primary Plaintiffs and Exhibit A – Derivative Plaintiffs (“Exhibits A”). I rule that the imperfections and deficiencies do not diminish or undermine the legal effect of the documents. The 27 Primary Plaintiffs and 25 Derivative Plaintiffs identified on the respective Exhibits A are hereby deemed to have executed legally binding Releases and Second Injury Letters, and the Primary Plaintiffs have opted into the settlement for purposes of

satisfying the Opt-In Threshold. Primary Plaintiffs and Derivative Plaintiffs on Exhibits A also are eligible to receive all payments due them under the Final Settlement Agreement, and are bound by the terms and conditions of the releases as set forth in Exhibit P to the SPA.

- b. Another group of Plaintiffs, including Derivative Plaintiffs, although also having evidenced their intention to settle, have failed to execute properly the appropriate documents. A list of 79 Primary Plaintiffs in this category is attached as Exhibit B, and a list of 288 Derivative Plaintiffs in this category is attached as Exhibit C. With regard to these Plaintiffs, I rule as follows.

- (i) Primary Plaintiffs identified on Exhibit B shall be deemed to have opted into the SPA for purposes of satisfying the Opt-In Threshold, but shall not receive any payments under the SPA until their respective deficiencies have been cured, or until further order of the Court. Fees or expenses relating to such Plaintiffs shall not be paid until the deficiencies are cured. The Parties shall attempt to resolve any disputes over deficiencies with the assistance of the Special Masters before seeking relief from the Court.
- (ii) Derivative Plaintiffs identified on Exhibit C have claims that derive and depend upon the claim of their settling spouse, who is the Primary Plaintiff. Each of these Derivative Plaintiffs has a Primary Plaintiff spouse who either (a) has executed a proper release, or (b) is listed on Exhibit B. All such Derivative Plaintiffs' shall cure the deficiencies in their derivative releases before January 14, 2011. The related Primary Plaintiffs shall be deemed to have opted into the SPA for purposes of satisfying the Opt In Threshold, and

the related Primary Plaintiffs' claims will be evaluated by the Allocation Neutral. If any issues arise from separation or divorce, or from the death of spouses, those should be brought to the attention of the Allocation Neutral and the Parties by January 14, 2011, so that any necessary set-aside of derivative awards can be paid to the appropriate court. If, by January 14, 2011, the deficiencies are not remedied in accordance with this Order, the derivative claims may be dismissed with prejudice.


5. The SPA provides additional compensation to the settling Plaintiffs if the overall opt-in rate exceeds the minimum required threshold, ninety-five percent of Eligible Plaintiffs. For every additional one percent over the minimum, the WTC Captive Insurance Company must pay an additional two percent of the base settlement amount, or \$12.5 million, over and above the base amount of \$625 million. At opt-in rates exceeding ninety-eight percent, the WTC Captive Insurance Company must pay two-tenths of one percent (.2 percent) of the base settlement amount for every one-tenth of one percent (.1 percent) over the minimum. This amounts to an added \$1.25 million for every one-tenth of one percent (.1 percent) over the 98 percent threshold. See SPA §§ IV.E, II.A. Additional amounts of incentive payments may be available based on other criteria. See id. §§ II.A, IV. The WTC Captive Insurance Company represents that, before adjustment for dismissals, ninety-six and three-tenths percent (96.3 percent) of the Eligible Plaintiffs had opted into the settlement agreement. This figure, however, does not account for dismissals with prejudice provided in today's Orders; these should be removed from the EPL, see SPA § IV.A., and the ratio for calculating the opt-in percentage adjusted. It appears, *prima facie*, that after removing these dismissed Plaintiffs from the EPL, the

final percentage of Plaintiffs who have opted into the settlement exceeds ninety-eight percent. It follows that the amount of incentive payments should be \$37.5 million at ninety-eight percent plus whatever fractional percentages over and above ninety-eight percent reflect the actual ratio of settling Plaintiffs to Eligible Plaintiffs who have not been dismissed with prejudice, as well as whatever additional incentive payments may be triggered.

6. Immediately following the report of the WTC Captive Insurance Company, fixing the several numbers identified in this Order, and the entry of this Order, the Affirmation of Final Settlement shall be signed and, as provided by the SPA, the payments thereunder shall duly issue by the Allocation Neutral to the Plaintiffs entitled thereto.
7. The WTC Captive Insurance Company, or any other party feeling aggrieved by any term of this Order or the dismissal Orders also issuing today, may file objections and supporting briefing by January 7, 2011, at 12:00pm.

SO ORDERED.

Dated: December 30, 2010  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge

## Exhibit A - Primary Plaintiffs

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
1	Carroll	Padraig	Carroll	Deirdre	06cv13827	21mc100
2	Diaz	Diego	Garcia	Veronica	07cv09089	21mc100
3	DiIenna	Albert			05cv08877	21mc100
4	Dunne	John	Dunne	Mary	06cv13882	21mc100
5	Golba	Fred			10cv00554	21mc100
6	Hanson	Robert			06cv07309	21mc100
7	Hubert	Frank			06cv11695	21mc100
8	LoPresti	Laura	Lopresti	Peter	06cv14809	21mc100
9	Maklari	Dennis	Maklari	Linda	08cv00728	21mc100
10	McGlyn	John	McGlyn	Kim	06cv14858	21mc100
11	McKee	Evelyn	Mckee	Shaun	07cv04389	21mc100
12	Mitchell	Solomon	Mitchell	Victoria	06cv14883	21mc100
13	Montgomery	Peter	Montgomery	Jacalyn	06cv12337	21mc100
14	Nicotra	Doreen	Nicotra	Stephen	06cv14056	21mc100
15	Nunez	Marino	Nunez	Magnolia	07cv10248	21mc100
16	Sparacia	Christopher	Sparacia	Dawn	06cv09220	21mc100
17	Taylor	Sondra	Taylor, Sr.	Robert	08cv11445	21mc100
18	Trance	Michael	Trance	Evelyn	06cv15098	21mc100
19	Foremska	Lucyna	Foremska	Tadeusz	05cv03090	21mc102
20	Galvis	Edgar			06cv03422	21mc102
21	Tabares	Ljiljana			07cv08289	21mc102
22	Caivinagua	Juan			07cv01574	21mc103
23	Gallego	Carmen	Gallego	Salazar	07cv00062	21mc103
24	Jones	James			06cv11700	21mc103
25	Leon	Cesar	Dipini	Agnes	07cv00063	21mc103
26	Quizhpi	Nelly	Sinchi	Victor	08cv04941 & 07cv01535	21mc103
27	Riera	Carlos			07cv01518	21mc103

## Exhibit A - Derivative Plaintiffs

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
1	Arellano	Lorenzo	Arellano	Tricia	05cv01082	21mc100
2	Arthur	Kenrick	Vines	Valerie	06cv10603	21mc100
3	Athanassiou	Theo	Athanassiou	Helen	06cv11156	21mc100
4	Bryan	Raymond	Bryan	Sheila	06cv11632	21mc100
5	Dunne	John	Dunne	Mary	06cv13882	21mc100
6	Edwards	Keith	Edwards	Maria	06cv08958	21mc100
7	Hill	Kelvin	Hill	Diana	07cv09124	21mc100
8	Keane	Robert	Keane	Cathy	06cv10371	21mc100
9	Maklari	Dennis	Maklari	Linda	08cv00728	21mc100
10	McGlyn	John	McGlyn	Kim	06cv14858	21mc100
11	Mulcahy	Daniel	Mulcahy	Siobhan	06cv10667	21mc100
12	O'Neill	Daniel	O'Neill	Grisell	06cv10620	21mc100
13	Rhiman	Alim	Rhiman	Bibi	06cv12444	21mc100
14	Soliman	Elsayed	Elsayed	Doris	05cv03693	21mc100
15	Thomson	Dennis	Thomson	Anita	05cv01630	21mc100
16	Tierney	Brian	Tierney	Denise	06cv11124	21mc100
17	Trance	Michael	Trance	Evelyn	06cv15098	21mc100
18	Gavidia	Blanca	Gavidia	Alexo	07cv04468	21mc102
19	Guiracocha	Samuel	Guiracocha	Rosa Matilde	06cv12120	21mc102
20	Kowalczyk	Adam	Kowalczyk	Sabina	06cv02252	21mc102
21	Vivar	David	Vivar	Luz	07cv05390	21mc102
22	Alvarez-Garcia	Hernando	Alvarez	Ligia	07cv11016	21mc103
23	Khan	Imtiaz	Khan	Bibi	06cv12182	21mc103
24	Martin	Craig	Martin	Beatrice	06cv08035	21mc103
25	Sandoya	Henry	Alvarez	Gloria	07cv11025	21mc103



## Exhibit B

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
1	Alessi	John	Alessi	Sunshine	07cv08864	21mc100
2	Anzalone	Robert	Anzalone	Ann Marie	05cv01627	21mc100
3	Athanassiou	Theo	Athanassiou	Helen	06cv11156	21mc100
4	Bishun	Kampta	Bishun	Hassena	07cv04314	21mc100
5	Blount	Anthony			09cv03307	21mc100
6	Boyles	Melba	Finlator	Michael	06cv10258	21mc100
7	Calabrese	Mathew	Calabrese	Linda	06cv08954	21mc100
8	Capobianco	Kenneth	Capobianco	Michele	06cv14531	21mc100
9	Carter	Yannique			06cv14538	21mc100
10	Citara, Sr.	John			08cv00642	21mc100
11	Dacunto	Robert	Dacunto	Nancy	06cv09024	21mc100
12	Dalton	Charles			03cv00006	21mc100
13	Davis	Jacqueline	Manzo	Michael	06cv08032	21mc100
14	DeSalvo	Jack	DeSalvo	Jennifer	06cv14604	21mc100
15	DeSio	James	DeSio	Kim	06cv07389	21mc100
16	Dobbins	James	Dobbins	Jacqueline	06cv12028	21mc100
17	Elci	Thomas	Elci	Rosaria	06cv09993	21mc100
18	Ford	Jeffrey	Ford	krista	06cv10557	21mc100
19	Fox	Robert	Fox	Ana	05cv01070	21mc100
20	Francisco	Vladimir			06cv11762	21mc100
21	Garcia	Franklin			06cv09560	21mc100
22	Golba	Fred			10cv00554	21mc100
23	Harris	Eugene	Newton-Harris	Yolanda	05cv01382	21mc100
24	Hill	Kelvin	Hill	Diana	07cv09124	21mc100
25	Howley	William	Howley	Mary	06cv11694	21mc100
26	Hudak	Richard	Hudak	Carole	07cv08897	21mc100
27	Johnson	Raymond			06cv12163	21mc100
28	Johnson	Rita			06cv12766	21mc100
29	Johnson, Jr.	Robert	Johnson	Christine	03cv00007	21mc100
30	Karen	Howard	Karen	Deborah	07cv10169	21mc100
31	Kearns Jr.	Thomas	Kearns	Mary Ann	06cv14768	21mc100
32	Kibler	Robert			06cv11559	21mc100
33	Lee	Ricky			06cv08445	21mc100
34	Martinez	Hector	Martinez	Rosanna	06cv09126	21mc100
35	Mayers	Cedric			06cv08460	21mc100
36	McKeon	Eugene	McKean	Cynthia	Notice of Claim	21mc100
37	McMillan	Mary			06cv07319	21mc100
38	Mendez, Jr.	Nelson			06cv14871	21mc100
39	Mills	Robert			06cv08474	21mc100
40	Murray	Bridget	Dorsett	Floyd	06cv12794	21mc100
41	Nieves	Antonio	Nieves	Jessica	06cv12372	21mc100

## Exhibit B

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
42	Norbury	John	McArdle	Gia	06cv06796	21mc100
43	Oetting	William	Oetting	Michele	05cv01717	21mc100
44	O'Rourke	Kevin	O'Rourke	Stacey	05cv01791	21mc100
45	Pellington	Stephen	Pellington	Andrea	09cv03405	21mc100
46	Pines	Anthony	Pines	Emma	06cv10437	21mc100
47	Ponce	Richard			06cv09673	21mc100
48	Powell	Issac			05cv01612	21mc100
49	Riccardi	Joseph	Riccardi	Maria	Notice of Claim	21mc100
50	Roberts	Edwin	Roberts	Evelyn	07cv10832	21mc100
51	Russo	James			08cv04665	21mc100
52	Ryan	Christopher	Ryan	Erin	05cv01632	21mc100
53	Saitta	Daniel	Saitta	Laura	07cv09180	21mc100
54	Scacchi	Luigi	Mancini	Giuseppina	07cv10843	21mc100
55	Schmidt	Charles			06cv10157	21mc100
56	Serrano	Jose			06cv11584	21mc100
57	Solis	Oscar	Solis	Sandra	06cv07551	21mc100
58	Spagnola	Joseph	Spagnola	Wendy	06cv15074	21mc100
59	Tavarez	Ruth			06cv07255	21mc100
60	Timashev	Marat	Timasheva	Guzalya	07cv06518	21mc100
61	Truglio	Steven	Truglio	Aleksandra	06cv15101	21mc100
62	Valarezo	Wilson	Obando-Aguire	Sara	06cv07564	21mc100
63	Valerga	Paul	Valerga	Tracy	08cv00804	21mc100
64	Valerio	Joseph	Valerio	Patti	06cv10893	21mc100
65	Weeks	Raul	Weeks	Ana	05cv02551	21mc100
66	Zachar	Kenneth	Zachar	Daniella	06cv12639	21mc100
67	Alvear	Santiago	Carpio	Martha	06cv02220	21mc102
68	Delacruz	Gloria	Delacruz	Ramon	07cv01599	21mc102
69	Guerrero	Antonio			07cv05294	21mc102
70	Morales	Segundo	Morales	Dolores	07cv01668	21mc102
71	Pumacuri	Manuel			09cv03453	21mc102
72	Valdiviezo	Hector	Casado	Veronica	07cv01542	21mc102
73	Zamora	Bolivar	Huiracocha	Fanny	08cv02740	21mc102
74	Azubike	Victor	Azubike	Tekrisha	07cv09058	21mc103
75	Cesta	Monte	Mesa	Elaine	08cv02597	21mc103
76	Giraldo	Hitier			07cv05554	21mc103
77	Marshall	Donna			07cv05417	21mc103
78	Naranjo	Adolfo	Alcivar	Doris	08cv02295	21mc103
79	Salwa	Jan	Salwa	Irena	08cv02707	21mc103

## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
1	Addonisio	Nick	Addonisio	Lisa	07cv08862	21mc100
2	Agnelli	Anthony	Agnelli	Rose	06cv11882	21mc100
3	Akil	Okpara	Akil	Ronnita	06cv11905	21mc100
4	Alaimo	Salvatore	Alaimo	Donna	05cv09330	21mc100
5	Alexander	Victor	Alexander	Geraldine	07cv04405	21mc100
6	Audino	Joseph	Audino	Audrey	06cv09965	21mc100
7	Bagiokos	Sarantos	Bagiokos	Patricia	06cv07938	21mc100
8	Barnes	Milton	Barnes	Bernice	05cv09953	21mc100
9	Bavaro	Paul	Bavaro	Carolyn	05cv01081	21mc100
10	Bechtold	William	Bechtold	Marie Elissa	07cv08867	21mc100
11	Beck	James	Beck	Christine	06cv10706	21mc100
12	Benn	Richard	Benn	Ann	07cv09064	21mc100
13	Bennett	Howard	Bennett	Donna	05cv01424	21mc100
14	Bishun	Kampta	Bishun	Hassena	07cv04314	21mc100
15	Blackwood	Andre	Blackwood	Karen	06cv10251	21mc100
16	Boccanfuso	Bryan	Boccanfuso	Tina	06cv12848	21mc100
17	Bomhoff	John	Bomhoff	Joanne	06cv11543	21mc100
18	Bonanno	Anthony	Bonanno	Stephanie	06cv10253	21mc100
19	Booth	Paul	Booth	Julie	06cv09271	21mc100
20	Bourne	Thomas	Bourne	Joann	08cv01351	21mc100
21	Bovell	Leon	Bovell	Stephanie	06cv13618	21mc100
22	Bratjan	Jeffrey	Bratjan	Brandi	07cv10084	21mc100
23	Brumbaugh	Ronald	Brumbaugh	Joanne	06cv08343	21mc100
24	Bustamante	Enrique	Bustamante	Lusmila	06cv12711	21mc100
25	Butler	Julio	Butler	Regina	07cv04338	21mc100
26	Cacovic	Alexander	DeMasi-Cacovic	Antionette	05cv04222	21mc100
27	Caggiano	Victor	Caggiano	Sofia	06cv13815	21mc100
28	Calabrese	Mathew	Calabrese	Linda	06cv08954	21mc100
29	Calzolano	Steven	Calzolano	Debra Ann	06cv10721	21mc100
30	Campbell	Howard	Campbell	Karlen	07cv09078	21mc100
31	Caputo	Joseph	Caputo	Susanne	07cv04890	21mc100
32	Cardona	Leslie	Matter	Ron	07cv04891	21mc100
33	Carrion	Isidro	Carrasquillo	Teresa	09cv03320	21mc100
34	Caruso	Troy	Caruso	Susan	07cv05194	21mc100
35	Cassabria	Richard	Cassabria	Mary	07cv04895	21mc100
36	Chacko	Ninan	Chacko	Sara	06cv12717	21mc100
37	Chambers	Michael	Chambers	Patricia Ann	05cv02651	21mc100
38	Chinga	Mario	Chinga	Samantha	06cv09015	21mc100
39	Chopping	Roy	Chopping	Jennifer	06cv09276	21mc100
40	Coley	Farris	Coley	Sallie	06cv07377	21mc100
41	Colucci	Brad	Colucci	Patricia	06cv08666	21mc100
42	Conrad	Joseph	Conard	Joan	06cv14568	21mc100

## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
43	Coughlin	John	Coughlin	Janet	06cv11894	21mc100
44	Coveny	Michael	Coveny	Nancy	09cv02202	21mc100
45	Croswell	George	Croswell	Roeina	06cv09525	21mc100
46	Cuccaro	Michael	Cuccaro	Anna	06cv08367	21mc100
47	Cuevas	Jaime	Cuevas	Daphne	06cv08589	21mc100
48	Cupani	Robert	Cupani	Nancy	06cv13858	21mc100
49	Davis	Rodney	Davis	Jennifer	06cv11172	21mc100
50	Defreitas	Derrick	Howard	Janel	06cv12021	21mc100
51	DeJesus	Richard	DeJesus	Eliza	06cv09031	21mc100
52	Dellecave	Salvatore	Dellecave	Kimberly	08cv01369	21mc100
53	DeLuce	Stephen	DeLuce	Patricia	06cv10739	21mc100
54	Demaria	Frank	Demaria	Lisa	09cv03343	21mc100
55	DeMasi	Nicholas	DeMasi	Chris	06cv12732	21mc100
56	Diaz	Diego	Garcia	Veronica	07cv09089	21mc100
57	Dilenna	Albert	Dilenna	Vito	05cv08877	21mc100
58	DiLeo	Frank	Dileo	Assuntina	06cv03316	21mc100
59	Dilone	Pedro	Dilone	Estrella	06cv08382	21mc100
60	DiMartino	James	DiMartino	Xiomara	06cv12735	21mc100
61	Dispigna	Pat	Dispigna	Renee	05cv07685	21mc100
62	Dobbins	James	Dobbins	Jacqueline	06cv12028	21mc100
63	Dombrowski	Julia	Dombrowski	John	06cv12030	21mc100
64	Donohue	Guy	Judge	John	06cv08762	21mc100
65	D'Ornellas	Manuel	Lambert	George	07cv10097	21mc100
66	Dorrmann	Robert	Dorrmann	Christina	06cv13879	21mc100
67	DuBois	Richard	Dubois	Tara	08cv00665	21mc100
68	Dunworth	Michael	Dunworth	Rosemarie	09cv03349	21mc100
69	Durler	David	Durler	Nanci	07cv08959	21mc100
70	Dziubela	Richard	Dziubela	Carolann	06cv08595	21mc100
71	Erler	Richard	Erler	Barbara	06cv10125	21mc100
72	Esposito	Paul	Esposito	Corrine	06cv08394	21mc100
73	Failla	Louis	Failla	Kerriann	06cv10750	21mc100
74	Farrell	Charles	Farrell	Maria	06cv14638	21mc100
75	Farrell	Daniel	Farrell	Catherine	06cv08396	21mc100
76	Farrell	Robert	Schultleis	Maura	05cv01433	21mc100
77	Ferraro	Dominic	Ferraro	Barbara	07cv10769	21mc100
78	Ferro	Albert	Ferro	Gina	06cv09551	21mc100
79	Fisher	Carl	Fisher	Donna	04cv09083	21mc100
80	Fitzpatrick	Patricia	Fitzpatrick	Abigail	08cv06643	21mc100
81	Francis	Orville	Francis	Margaret	06cv08597	21mc100
82	Frey	Keith	Frey	Elizabeth	06cv12077	21mc100
83	Fuller	Roy	Fuller	Karen	06cv10759	21mc100
84	Furia	Mark	Furia	LeeAnn	06cv13912	21mc100

## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil	Master
	Last Name	First Name	Last Name	First Name	Action No.	Docket
85	Galvin	John	Galvin	Eileen	08cv04637	21mc100
86	Gelpi	Manuel	Gelpi	Carmen	07cv09210	21mc100
87	Giannandrea	Garry	Giannandrea	Barbara	06cv02959	21mc100
88	Gilmartin	Brian	Nagle	Irene	06cv14685	21mc100
89	Giovacco	Ralph	Giovacco	Dawn-Marie	06cv09566	21mc100
90	Godwin	Eugene	Godwin	Andrea	06cv10659	21mc100
91	Goodwill	Aubrey	Goodwill	Morelda	06cv10329	21mc100
92	Graziano	Maria	James	Anthony	07cv04954	21mc100
93	Gronberg	Richard	Gronberg	Daria	09cv03365	21mc100
94	Guarino	Alan	Guarino	Susan	06cv10768	21mc100
95	Haner	Jeff	Haner	Ann	06cv11023	21mc100
96	Harrington	Michael	Harrington	Jill	06cv11692	21mc100
97	Harris	Eugene	Newton-Harris	Yolanda	05cv01382	21mc100
98	Harwood	Ronald	Tozer	Brenda	06cv12132	21mc100
99	Haynes	William	Haynes	Leah	06cv10346	21mc100
100	Hecht, Jr.	Marc	Hecht	Faye	06cv14716	21mc100
101	Henderson	William	Henderson	Maria	05cv01234	21mc100
102	Hernandez	Jerson	Hernandez	Lillian	07cv10161	21mc100
103	Hickey	Peter	Hickey	Pamela	06cv09081	21mc100
104	Houck	Charles	Houck	Jill	06cv12260	21mc100
105	Hubert	Frank	Hubert	Lauri	06cv11695	21mc100
106	Hunter	William	Hunter	Desirae	06cv11697	21mc100
107	Jackson	Anthony	Gilliens-Jackson	Janine	06cv08427	21mc100
108	Jackson	Paul	Jackson	Kathleen	05cv01499	21mc100
109	Johnson	Brendan	Johnson	Jane	06cv10367	21mc100
110	Johnson	Darrell	Johnson	Rhonda	06cv12159	21mc100
111	Johnson, Jr.	Robert	Johnson	Christine	03cv00007	21mc100
112	Jones	Robert	Jones	Joyce	06cv07449	21mc100
113	Khan	Shawn	Khan	Suzanne	06cv11558	21mc100
114	Khealie	Ralph	Khealie	Shirley	07cv04194	21mc100
115	Kleiman	Jeff	Kleiman	Diane	06cv14775	21mc100
116	Lambkin	John	Lambkin	Jane	06cv10041	21mc100
117	Latimore-Harp	Dorothy	Harp	Jeffrey	06cv10043	21mc100
118	Lavore	Giuseppe	Lavore	Kathryn	06cv08443	21mc100
119	Lee	Ryan	Lee	Kalena	06cv09300	21mc100
120	Leger-Vargas	Guilaine	Vargas	Hector	06cv08907	21mc100
121	Leone	Domenico	Leone	Isabella	08cv00714	21mc100
122	Lopez	Rene	Lopez	Juhenne	06cv13612	21mc100
123	LoPresti	Laura	Lopresti	Peter	06cv14809	21mc100
124	Loughlin	Thomas	Loughlin	Tracy	06cv09623	21mc100
125	Lubeck	Victoria	Lubeck	Jason	06cv09838	21mc100
126	Luna	Manuel	Rivera	Boroido	07cv08907	21mc100

## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil	Master
	Last Name	First Name	Last Name	First Name	Action No.	Docket
127	Luongo	William	Luongo	Gloria	06cv10387	21mc100
128	Luparello	Alessandro	Luparello	Florence	06cv09624	21mc100
129	Lynam	James	Lynam	Athena	06cv11865	21mc100
130	Maddalena	Erasmus	Maddalena	Antonia	05cv01710	21mc100
131	Madden	Eugene	Madden	Karen	06cv09304	21mc100
132	Maggiore	Dominick	Maggiore	RoseAnn	07cv10798	21mc100
133	Maguire	Peter	Maguire	Lisa	07cv05137	21mc100
134	Maher	James	Maher	Rosemary	06cv06919	21mc100
135	Maher	John	Maher	Rosemary	07cv04197	21mc100
136	Malave	James	Malave	Soraya	07cv09142	21mc100
137	Malone	John	Malone	Lisa	08cv04648	21mc100
138	Mangan-Nadal	Constance	Nadal	Edwin	06cv07316	21mc100
139	Martin	Kevin	Martin	Karen	06cv09629	21mc100
140	Martinez	Luis	Martinez	Suzanne	06cv10665	21mc100
141	Mastrande	Guy	Mastrande	Silvina	06cv10393	21mc100
142	Mazza	Thomas	Mazza	Darann	06cv08698	21mc100
143	McAuliffe	John	McAuliffe	Jeanne	06cv09805	21mc100
144	McCann	Daniel	McCann	Karen	06cv03315	21mc100
145	McCarthy	Jessy	Mungen	Jason	06cv07247	21mc100
146	McCaskey	Robert	McCaskey	Patrice	08cv01398	21mc100
147	McEwan	Tom	McEwan	Syzzette	06cv14856	21mc100
148	McHugh	Thomas	McHugh	Diane	07cv10014	21mc100
149	McKee	Evelyn	McKee	Shaun	07cv04389	21mc100
150	McNamara	Robert	McNamara	Lisa	06cv14863	21mc100
151	Miller	Richard	Miller	Amy	07cv10813	21mc100
152	Miller	Steven	Miller	Noreen	06cv09641	21mc100
153	Miller	Taiwo	Miller	Stephanie	06cv12325	21mc100
154	Mitchell	Solomon	Mitchell	Victoria	06cv14883	21mc100
155	Modawar	Joseph	Modawar	Francesca	06cv12331	21mc100
156	Moore	Raymond	Moore	Irene	06cv06019	21mc100
157	Moya	Angel	DeLeon-Moya	Sandra	06cv11093	21mc100
158	Murawinski	Richard	Murawinski	Marlene	06cv07321	21mc100
159	Murray	Bridget	Dorsett	Floyd	06cv12794	21mc100
160	Murray	Raymond	Hennessy	Julie	06cv09342	21mc100
161	Myers	Harry	Myers	Sophia	06cv08488	21mc100
162	Nacional	Modesto	Nacional	Sally	06cv11226	21mc100
163	Napolitano	John	Napolitano	Marie	06cv10145	21mc100
164	Nieves	Antonio	Nieves	Jessica	06cv12372	21mc100
165	Nozile	Fred	Nozile	Amma	06cv10065	21mc100
166	O'Connor	Patrick	O'Connor	Lisa	07cv10194	21mc100
167	Oakes	Darren	Oakes	Maria	06cv10425	21mc100
168	O'Brien	John	O'Brien	Linda	06cv10668	21mc100

## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
169	O'Dea	Thomas	O'Dea	Lisa	08cv04656	21mc100
170	Ohlson	Linda	Ohson	Rudy	06cv10067	21mc100
171	Orellana	Johnny	Orellana	Linda	06cv14935	21mc100
172	Orsulich	Stephan	Orsulich	Kazue	08cv01775	21mc100
173	Owens-Page	Ella	Page	Ben	06cv11575	21mc100
174	Palleschi	Michael	Palleschi	Catherine	06cv12801	21mc100
175	Patti	Peter	Patti	Rita	06cv11832	21mc100
176	Pellegrino	Joseph	Pellegrino	Gina	06cv08656	21mc100
177	Pellington	Stephen	Pellington	Andrea	09cv03405	21mc100
178	Peralta	Rafael	Peralta	Yolanda	06cv14957	21mc100
179	Perrin	Anthony	Perrin	Denise	06cv10072	21mc100
180	Porrata	Anthony	Porrata	Maritza	06cv08849	21mc100
181	Presuto	Stephen	Presuto	Carolyn	07cv05043	21mc100
182	Puma	Joseph	Puma	Victoria	09cv03414	21mc100
183	Ramrattan	Victor	Ramrattan	Bibi	05cv09340	21mc100
184	Rios	John	Rios	Elba	06cv08085	21mc100
185	Roberts	Carlyle	Roberts	Janice	06cv09684	21mc100
186	Roberts	Roland	Roberts	Amelia	07cv10833	21mc100
187	Rocchio	Silvestro	Rocchio	Melissa	06cv12457	21mc100
188	Rodriguez	Esteban	Rodriguez	Yolanda	06cv08523	21mc100
189	Roemer	James	Roemer	Mary	06cv10863	21mc100
190	Rogers	Colin	Rogers	Heather	06cv10468	21mc100
191	Sabatini	Emil	Sabatini	Robin	06cv10971	21mc100
192	Sanchez	Jorge	Sanchez	Christina	06cv12486	21mc100
193	Santiago	Erick	Agramonte	Ramona	05cv01693	21mc100
194	Schindlar	Michael	Schindlar	Gloria	06cv15044	21mc100
195	Sciuto	Steven	Sciuto	Tara	06cv15053	21mc100
196	Scott	Julia	Jackson	Jessica	07cv09185	21mc100
197	Scotto	Vincent	Scotto	Amy	05cv09033	21mc100
198	Settecasì	Frank	Settecasì	Jeanette	06cv10487	21mc100
199	Sheridan	Stephen	Sheridan	Kathleen	06cv09215	21mc100
200	Shortell	Daniel	Shortell	Staci	10cv00789	21mc100
201	Sielaw	Robert	Chiauppa	Maria	06cv02886	21mc100
202	Silva	Enrique	Silva	Elizabeth	06cv09710	21mc100
203	Sims	Eddie	Sims	Shirley	06cv12528	21mc100
204	Slizewski	Kenneth	Kane-Slizewski	Kathy	05cv01183	21mc100
205	Somma	Carmine	Somma	Thomas	08cv05941 & 07cv10211	21mc100
206	Spera	Robert	Spera	Rita	06cv12860	21mc100
207	Spinelli	Frederick	Spinelli	Francine	05cv01666	21mc100
208	Stark	Frank	Stark	Pamela	05cv02495	21mc100
209	Steil	Joseph	Steil	Linda	06cv12548	21mc100



## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
210	Sterling	Joseph	Sterling	Brenda	06cv15080	21mc100
211	Stewart	James	Stewart	Sandra	06cv11590	21mc100
212	Stoll	Joseph	Stoll	Nazmoun	06cv12825	21mc100
213	Tarawally	Alpha	Tarawally	Kadiatu	06cv09729	21mc100
214	Thomas	Harold	Thomas	Ila	06cv15088	21mc100
215	Tierney	James	Tierney	Mary	05cv01642	21mc100
216	Timashev	Marat	Timasheva	Guzalya	07cv06518	21mc100
217	Torres	Jorge	Torres	Jane	06cv11313	21mc100
218	Train	Ronald	Train	Merry Lynn	06cv12582	21mc100
219	Troiano	Anthony	Hata	Keiko	06cv07562	21mc100
220	Truglio	Steven	Truglio	Aleksandra	06cv15101	21mc100
221	Trzaska	Thomas	Matson	Mona	07cv10859	21mc100
222	Turino	Michael	Turino	Louise	06cv08112	21mc100
223	Valarezo	Wilson	Obando-Aguire	Sara	06cv07564	21mc100
224	Valentin	Amado	Valentin	Luisa	06cv09739	21mc100
225	Valerga	Paul	Valerga	Tracy	08cv00804	21mc100
226	Van Utrecht	Harry	Van Utrecht	Yvonne	06cv09740	21mc100
227	Vargas	Erik	DiPiazza	Jodilynn	07cv09000	21mc100
228	Vega	Orlando	Vega	Luz	06cv15112	21mc100
229	Vega	Richard	Vega	Nancy	06cv10524	21mc100
230	Velazquez	Rufino	Velazquez	Maria	06cv08941	21mc100
231	Velez	David	Velez	Mary	06cv07567	21mc100
232	Vitale	John	Vitale	Catherine	06cv10529	21mc100
233	Walker	James	Walker	Suzanne	06cv15128	21mc100
234	Wanker	Christopher	Wanker	Maghan	05cv04442	21mc100
235	Washington	William	Washington	Acention	05cv02037	21mc100
236	Waters	Dorothy	Waters	Lorraine	08cv00811	21mc100
237	Whitfield	Lorren	Whitfield	Carolyn	05cv01427	21mc100
238	Wilczewski	Wieslaw	Wilczewski	Zofia	06cv12621	21mc100
239	Williams	LeRoy	Williams	Sonji	06cv12625	21mc100
240	Zachar	Kenneth	Zachar	Daniella	06cv12639	21mc100
241	Alvear	Santiago	Carpio	Martha	06cv02220	21mc102
242	Arias	Julio	Arias	Jane	06cv01340	21mc102
243	Davila	Flora	Davila	Paul	07cv04463	21mc102
244	Foremska	Lucyna	Foremska	Tadeusz	05cv03090	21mc102
245	Guartambel	Jose	Guartambel	Mercedes	08cv04937	21mc102
246	Loja	Jose	Durazno	Livia Maria	06cv12219	21mc102
247	Mendoza	Enrique	De Mendoza	Maria	07cv05302	21mc102
248	Mnich	Marian	Mnich	Anna	08cv05764	21mc102
249	Mora	Andres	Valdez	Rosa	08cv02661	21mc102
250	Morales	Segundo	Morales	Dolores	07cv01668	21mc102



## Exhibit C

No.	Primary Plaintiff		Derivative Plaintiff		Civil Action No.	Master Docket
	Last Name	First Name	Last Name	First Name		
251	Morocllloo-Andrade	Simon	Hoyos	Monica	08cv02663	21mc102
252	Naula	Miguel	Margarita	Maria	08cv02671	21mc102
253	Paduani	Miguel	Paduani	Camille	07cv05307	21mc102
254	Torres	Miguel	Torres	Maria	07cv04519	21mc102
255	Valdiviezo	Hector	Casado	Veronica	07cv01542	21mc102
256	Alvarez	Maria	Chavarriaga	Carlos	05cv10135	21mc103
257	Azubike	Victor	Azubike	Tekrisha	07cv09058	21mc103
258	Belkowski	Wlodzimierz	Belkowski	Teresa	07cv05339	21mc103
259	Carlisi	Michael	Carlisi	Tara	06cv02819	21mc103
260	Cesta	Monte	Mesa	Elaine	08cv02597	21mc103
261	DeJesus	Gilberto	DeJesus	Maria	07cv09087	21mc103
262	Dominguez	Tailor	Dominguez	Juanna	08cv02266	21mc103
263	Donnelly	Christopher	Donnelly	Linde Carol	07cv09978	21mc103
264	Encalada	Marco	Encalda	Blanca	07cv01494	21mc103
265	Gallego	Carmen	Gallego	Salazar	07cv00062	21mc103
266	Greaney	John	Greaney	Andrea	07cv05410	21mc103
267	Kajewska-Pielarz	Bozena	Pielarz	Jozef	05cv00744	21mc103
268	Leon	Cesar	Dipini	Agnes	07cv00063	21mc103
269	Leon	Ines	Quezada	Luis	07cv04481	21mc103
270	Liguori	Jerry	Liguori	Rita	06cv08447	21mc103
271	Mahoney	Robert	Mahoney	Frances	06cv11709	21mc103
272	Maldonado	Felix	Santos	Cristina	06cv14825	21mc103
273	Meltz	Richard	Meltz	Karen	06cv08469	21mc103
274	Merchan	Carlos	Merchan	Martha	07cv01665	21mc103
275	Miranda	Susana	Labre	Martin	08cv02293	21mc103
276	Mollahan	Robert	Mollahan	Edward	07cv05018	21mc103
277	Pena	Alexander	Pena	Maryan	07cv08929	21mc103
278	Ramirez	Harold	Thomas	Novoa	08cv02304	21mc103
279	Robles	Blanca	Encalada	Marcos	07cv01520	21mc103
280	Rodas	Patricio	Ruiz	Taina	07cv01694	21mc103
281	Rojas	Jaime	Hernandez	Johanna	07cv04511	21mc103
282	Romaniuk	Mieczyslaw	Romaniuk	Maria	07cv05316	21mc103
283	Stanford	Phillip	Stanford	Susan	08cv05157	21mc103
284	Szynkowski	Zbigniew	Szynkowska	Ewa	08cv02308	21mc103
285	Torres	Felix	Torres	Maria	06cv01675	21mc103
286	Vanfechtmann	Edward	VanFechtman	Lorraine	07cv01719	21mc103
287	Vitiello	Andrew	Vitiello	Sylvia	06cv09244	21mc103
288	Wragg	Clarence	Wragg	Cecilia	06cv08125	21mc103

Honorable Alvin K. Hellerstein  
U.S. District Court for the  
Southern District of N.Y.

In Re WTC Disaster Litigation  
REPORT TO THE COURT:  
SPECIAL COUNSEL PROJECT

Dear Judge Hellerstein:

Attached is our Report on the Special Counsel Project assigned to me in your Honor's Order of November 24, 2010. We elaborate the outreach steps considered, the methodology utilized and the results of our communications with some 546 Eligible Plaintiffs who, at the time of our assignment, had not yet opted into the Settlement Process Agreement.

Many hundreds of these had not responded to their lawyers' communications. Your Honor's Order suggested that there were frustrations behind the non-responses. Our contacts with many of these plaintiffs confirmed that.

Based on written response forms returned to us, substantive telephone conferences with plaintiffs or in-person meetings with some, a significant number of Eligible Plaintiffs expressed a decision on how they wished to proceed. The total numbers are as follows:

Opt Ins:	44
Opt Outs:	31
Discontinuances:	47

Three additional written responses came in after the December 17 deadline (two Opt Outs and one Discontinuance).

If you subtract from the 546 Eligible Plaintiffs originally "assigned" to us the 125 who expressed a definitive choice, the number not responding with a decision on how to proceed is 421.

We have back-up and log data for communications, contacts and response/non-response records for each Eligible Plaintiff on the list received from plaintiffs' counsel. If you require, we can generate a spreadsheet.

We received excellent and unreserved cooperation from William H. Groner and Christopher LoPalo of plaintiffs' law firm. They made our task easier, which was much appreciated given the narrow time frame and the large number of persons needing outreach. We mailed to 544 plaintiffs. We telephoned at least 258 plaintiffs, often multiple times. We engaged in substantive telephone discussions with 128 plaintiffs. We met in person with seven individuals in our New York and Long Island offices. These meetings included two of the first plaintiffs who are among the most vocal and critical of the litigation process and settlement plan. We followed up with them at length by telephone several times. Virtually all of the plaintiffs we engaged in substantive discussions were appreciative for the assistance.

I will not specify here the plaintiffs' questions that our team lawyers addressed but there were many and they were quite complex.

In view of our rush to get the Report to you, please consider the foregoing a kind of "Executive Summary." If you wish a more formal Executive Summary, we will be happy to provide it.

Needless to say, if you have any questions we will try to answer them.

Thank you for this challenging assignment and your confidence in our ability to tackle it.

Sincerely,  
Michael Hoenig

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**\*Please note our new address.**



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## In Re WTC Disaster Litigation

### REPORT TO THE COURT: SPECIAL COUNSEL PROJECT

#### Introduction

In its Order dated November 24, 2010, the Court assigned to Michael Hoenig, a member of Herzfeld & Rubin, P.C., the task of acting as Special Counsel to hundreds of Eligible Plaintiffs who had not opted into the Settlement Process Agreement (SPA) to assist them in arriving at a decision in their best interests. These Eligible Plaintiffs consisted of several subgroups: persons who could not be located despite diligent efforts; persons who declined to communicate with their counsel; persons who expressed a desire to opt into the SPA but who had not completed their paperwork; and persons who were on the Eligible Plaintiffs list but who expressed a desire to withdraw from the lawsuit.

The Order tasked Special Counsel to assist such Eligible Plaintiffs to come to a decision on the basis of full and fair disclosure of all the benefits and detriments of each choice and to make proper declaration of such choice. The Order called for plaintiffs' law firms to provide assistance and access to their records. Special Counsel's services were to be performed until December 17, 2010 when they would end.

This Report summarizes the activities and methodologies utilized by Special Counsel in implementing the Court's assignment and describes the results of that effort.

1. Initial Flood of Inquiries

The Court's Order on the Special Counsel Project was announced on November 24, the day before Thanksgiving. Almost immediately, Special Counsel was personally deluged by phone calls from persons who were not Eligible Plaintiffs and who misunderstood the Court's Order to be a general extension of a deadline within which to file new claims or lawsuits or to join in pending litigation or to opt into the settlement. They seemingly were misled by news media and press headlines and accounts of a general extension of the litigation deadline to December 17.

Arrangements were made within Special Counsel's office to field such calls on an orderly, courteous basis. Names and contact information were taken and each such person was called thereafter to explain the nature of the deadline and the purposes of the Special Counsel Project. Those persons who needed legal advice were told to call the New York State Bar Association's Attorney Referral Service and were given the number. Contacts from persons not on the Eligible Plaintiffs List continued throughout the Project.

The initial flood of contacts included calls or e-mails from news media reporters wanting to interview Special Counsel or to get details regarding the assignment. Such contacts were not returned for a number of reasons.

## 2. Initial Steps

Because November 25 was Thanksgiving and the Project involved acquiring expert knowledge of many details in a very short period of time, the initial days were spent obtaining and studying the Settlement Process Agreement (SPA), the cancer insurance policy, The Zadroga Bill, contacting plaintiffs' lawyers, obtaining and studying their various letters to their clients (copy of which were appended to Counsel's reports to the Court of November 17 and 22, 2010), and conferring with Special Master Professor Aaron D. Twerski regarding the history and course of the World Trade Center (WTC) litigation, among other efforts.

Because the Court's Order mentioned that some 520 Eligible Plaintiffs had not opted into the SPA and Special Counsel's assignment would end on December 17, consideration had to be given as to how to reach out to so many non-responding persons within the narrow time frame available and give them the information and advice necessary for them to make a decision in their best interests. We were told that many plaintiffs were not responding to their lawyers and quite a number were not able to be located despite diligent efforts by their counsel. As a result, we had to consider and potentially prepare for personal contacts with hundreds of lay persons to explain legal complexities regarding their rights. And, although under the SPA Eligible Plaintiffs fell into only four tiers or settlement categories, individuals' injury pictures differed and the intricate "point system" applied under the SPA rendered complex the job of explaining many plaintiffs' likely settlement offers plus the possibility of additional

settlement amounts. These factors meant that explaining potential high and low settlement values to all individuals could entail personal analyses for each plaintiff, especially in tier 4. Time was thus needed to accommodate advising large numbers of persons.

We resolved to focus on establishing personal contacts with as many Eligible Plaintiffs as we could and to emphasize that we were independent Special Counsel available to help those who wanted such assistance. Because in-person meetings with large numbers of persons were possible, we had to consider the potential of meeting with hundreds of plaintiffs, either individually or in groups. This meant staffing adequately.

Legal complexities abounded. For example, to mention but a few, would opting into the SPA preclude claims for cancers occurring in the future? What would be the effect of the so-called “two-injury” rule the Court had mentioned in an earlier Order? What would be the interface of any of a plaintiff’s choices with the benefits accorded under the Zadroga Bill were it to pass? What is the likelihood of success or risk in not settling and continuing on with the lawsuit? How will the Resolution Neutral decide what the plaintiff’s settlement amount is? Can one appeal? And so on. These types of questions potentially raised by hundreds of individuals, it was clear, would require a staff of experienced lawyers to counsel those wanting assistance. Because, for many, these were critical crossroads decisions, we also needed paralegals to record and log in all contacts and decisions made by individuals.

Mr. Hoenig assembled a team of seven experienced litigators, one law clerk (awaiting admission to the bar) and a paralegal. The team was briefed extensively by Mr. Hoenig regarding the assignment; the importance of emphasizing our independence and availability to help those wanting it; the nature of the SPA; the insurance policy; the Zadroga Bill; Daubert considerations; the "two-injury" rule; and a host of other factors. A template for personal discussions by the team attorneys with individual plaintiffs was discussed so that some uniformity of communication would be effected, yet allow some flexibility to cover particularized or varied issues raised by individuals needing personal attention. Mr. Hoenig prepared the team regarding questions likely to be raised and the appropriate responses.

The Court's November 24 Order called for cooperation by plaintiffs' counsel and access to their records. We got it. Mr. Hoenig and his partner, Natalie Lefkowitz, conferred by phone with attorneys William H. Groner and Paul J. Napoli who offered their assistance. We decided that communications with plaintiffs' counsel would be more effective if one or two contact persons were designated. They, in turn, could invoke the assistance of others in their office. Mr. Groner offered his own assistance "24/7" and he truly made good on that offer as Mr. Hoenig and Ms. Lefkowitz often called upon him to discuss implementation of the Project. Mr. Groner designated attorney Christopher LoPalo, another of Plaintiffs' counsel, to be a contact person familiar with their records and plaintiffs' personal data. Mr. LoPalo, too, did not disappoint. His cooperation was prompt and responsive to our requests. Mr. Groner also met



with Special Counsel's team in person, described the challenges to be expected in contacting the plaintiffs and answered questions. Mr. LoPalo provided last-known contact information regarding the Eligible Plaintiffs who had not yet opted in, as well as other data critical to our assignment. Information was supplemented by them as needed.

### 3. Developing A Plan of Action

Mr. Hoenig carefully reviewed the various letters plaintiffs' counsel had sent to their clients and considered potential problems plaintiffs may have perceived with them. Since the Eligible Plaintiffs not responding to their counsel had already received this style of detailed correspondence, we resolved that any mailing to such plaintiffs should consist only of a simple letter offering Special Counsel's help and emphasizing our independence. The mailing would be via priority mail, overnight delivery. It would include a stamped, self-addressed envelope and a simple form to be signed and returned immediately expressing a wish for such assistance or one of other specified choices. The mailing would also advise about our e-mail address and a toll-free number where the claimant could express his/her wish for help.

Depending on the number of responses and the available time frame, we resolved to have team attorneys available for as many personal meetings as feasible, including one-on-one or group sessions. We would make our offices in lower Manhattan (with sizeable conference rooms) and Long Island available and, if necessary, would rent a convenient hotel meeting room to

accommodate an extremely large number of claimants seeking assistance, supplemented by break-out sessions with individual attorneys.

To accommodate those who work during the day, we would have attorneys available for meetings at night and during Saturdays and Sundays.

We would have a staff available to answer our toll-free number seven days a week until late at night. Thereafter, a recorded message would give callers instructions on leaving a name and telephone number so that the caller could be contacted the next day.

We considered placing ads in the N.Y. Times, Daily News, N.Y. Post and Newsday, particularly to try to reach the non-locatable plaintiffs. However, upon reflection, we rejected this step. First, costly advertising to millions of newspaper readers in order to try to reach some 80-90 persons who might have relocated outside the New York area did not seem efficient or cost-effective. Second, based on the rush of calls experienced when the news broke about Special Counsel and the December 17 deadline, from those who were not Eligible Plaintiffs and with continuing contacts by such persons, we concluded that advertising to several millions of newspaper readers would invite numerous calls or contacts by those who were not Eligible Plaintiffs but would like to discuss suing or participating in a settlement. A further surge of such callers would distract us from the limited assignment spelled out in the November 24 Order.

We had contact information regarding a number of First Responder or WTC Support Groups and considered placing ads or articles in their

newsletters or the group's e-mail distribution channels but here, too, we concluded that persons other than non-located Eligible plaintiffs would rush to try to join litigation that had passed them by. Further, in order to pinpoint messages towards the non-located plaintiffs, we would possibly divulge information to the Responder universe that individual plaintiffs might like to keep private. Ultimately, we concluded that "finding" non-located plaintiffs could be achieved better by investigative efforts targeted at the individuals than by mass publications.

#### 4. Implementation of the Project

There were 546 Eligible Plaintiffs who did not opt in to the SPA, according to the records of plaintiffs' counsel. We ascertained that 13 of these were deceased. We obtained from plaintiffs' counsel the names and addresses of 11 of the deceased's family members or representatives but there was no information regarding addresses for two of the deceased Eligible Plaintiffs.

##### A. Mailings

Accordingly, we sent out 544 letters, by priority mail overnight delivery, to the Eligible Plaintiffs group within our assignment. The letter was a simple expression of our independence and availability to help. The mailing also enclosed a response form containing simply-stated choices to be made regarding further action. A box adjacent each choice would be checked and the signed form was to be returned in the enclosed, postage-paid, self-addressed envelope. Plaintiffs also were advised regarding our toll-free telephone number and our e-

mail address. A sample Special Counsel letter and response form is attached as "Attachment 1."

Only 10 undelivered, returned mailings reached us. We tried to follow up with each of the 10 Eligible Plaintiffs. Reasons for the returned mailings were:

- 2 "moved, not forwardable" – we tried to reach both by phone and via other telephone numbers, unsuccessfully;
- 1 "no such number" – there was no such house number; his phone number was not working;
- 1 "unclaimed" – we contacted him by phone and e-mailed him another form, which he did not return;
- 1 "no such street" – we contacted him by phone; he verbally expressed a wish to opt in and we so advised his counsel;
- 1 "undeliverable" – we spoke to the plaintiff and he sent in his form to opt in;
- 1 "not at this address" – this returned mailing reached us on December 20, 2010, after our Project had ended and, therefore, no further attempt was made;
- 1 "attempted not known" – our lawyer tried to call him and left a message on his cell phone number;
- 2 "vacant" – we called the home and office of one plaintiff and both numbers were not in service; the other plaintiff's mailing reached us on

December 20, 2010, after our Project had ended and, therefore, no further attempt was made.

Based on the foregoing, an overwhelming number of our mailings, 534, were delivered. Follow-ups on the 10 returned mailings resulted in a number of informative contacts nonetheless.

B. Dedicated Phone Line

We established a dedicated, toll-free phone line. Following the 544 mailings, the toll-free phone line was staffed during the day and up to 11:00 p.m. Thereafter, a recorded announcement invited callers to leave a message and provide contact information. All such calls were followed up the next day by Project team members. Notwithstanding the dedicated, toll-free number, both Mr. Hoenig individually and the office switchboard continued to receive numerous calls relating to the WTC litigation. All such callers were spoken to or contacted later by team members.

C. Return Forms

We received 91 written response forms, most in our postage-paid return envelopes. A few were faxed, e-mailed or sent by plaintiffs in their own envelopes. A few plaintiffs created inconsistencies by checking two boxes, for example, one for "opting out" and one for "discontinuance." These were followed up by phone to clarify the choice.

D. Telephone Contacts

We followed up the mailings with telephone calls to at least 258 plaintiffs. Many involved additional multiple telephone contacts by Project team

members because messages were left and then followed up or because we had alternate telephone numbers to try when one number did not result in a conversation. In excess of 600 calls likely were initiated.

Of the 258 plaintiffs we telephoned, we engaged in substantive conversations with 128 plaintiffs. These contacts ranged from brief conversations identifying our independence, our availability to help, our suggestion to return the response forms, our invitation to meet in-person or further by phone, and our answering questions plaintiffs had – to full-blown, lengthy discussions explaining their rights and other input relevant for decision-making. Thus, substantive telephone conversations engaged nearly 25% of the Eligible Plaintiffs within our assignment. This effort, as a practical matter, was arguably even more effective since the initial number of 546 Eligible Plaintiffs included some 90 or so originally listed by counsel as not locatable.

Of the 258 plaintiffs we reached by phone, we also left messages (often multiple) for some 130 persons and these were not returned. Most plaintiffs, when offered in-person meetings, elected to proceed substantively by telephone conference instead. This led to many lengthy phone calls, frequently followed by additional phone conversations.

#### E. In-Person Meetings

Although we offered all individuals we spoke with in-person meetings, only seven (7) such in-person meetings were held. Several were held at our Long Island office. In one of these the plaintiff did not show up. He then called our Project attorney, apologized and requested a meeting the next day.

We accommodated his request. The rest of the in-person meetings were held in our N.Y. City office. One of these involved two plaintiffs at the same time. All in-person meetings were lengthy, substantive and deemed helpful by the individual plaintiffs all of whom expressed appreciation.

Even before our mailings were received, Mr. Hoenig received a request by two of the most vocal and knowledgeable "opt-out" plaintiffs for an in-person meeting. Both were Detectives who were the first plaintiffs in the litigation and both, over the years, had publicly expressed frustration and dissatisfaction with their attorneys' representation and the benefits to be awarded under the SPA. Mr. Hoenig decided to meet with them at their earliest convenience because their outspokenness and visibility within the group would possibly reflect or inform about experiences and frustrations of the larger group of plaintiffs who chose not to respond to their counsel or to opt in to the settlement. Mr. Hoenig was accompanied at this meeting by a few Project team members. The meeting was lengthy, informative and helpful. A number of questions were raised by each plaintiff that Mr. Hoenig said he would try to answer for them in future contacts. The plaintiffs expressed their appreciation.

Thereafter, Mr. Hoenig and Ms. Lefkowitz followed up with repeated, sometimes lengthy and detailed phone conversations with each plaintiff individually. Although each such plaintiff eventually decided not to opt into the settlement, we believe they were informed adequately for purposes of making a decision.

F. Non-Locatable Eligible Plaintiffs

A large number of Eligible Plaintiffs were categorized by their counsel as not located despite diligent efforts to do so. The numbers varied from 93 to less than 80 at different times. We examined the nature of counsel's efforts and found those efforts to be reasonable. Using these plaintiffs' last known addresses and phone numbers, we mailed them the letters and response forms and followed up with attempted phone calls. We also engaged an internet search service to test the results of attempting by such means to find about a half-dozen tier 4 plaintiffs from the "not-located" group. One of our Project lawyers followed up with this service. The process was time-consuming as these advertised internet search services usually introduce the searcher to still more search engines requiring further exploration. Proving to be an unsuccessful test, we tried an alternative approach. One of our technically-oriented paralegals conducted internet searches for nine of the tier 4 "not-located" plaintiffs, as a test. Although he developed additional numbers and locations for some six of the individuals, diligent follow-up showed that they were not correct information for the individuals involved. This approach was halted.

We considered use of an experienced private investigator to do the searches but the hourly charges, the number of hours needed for each person and the time available for our assignment made this an expensive, inefficient project. Additionally, our Project team members had to focus on substantive discussions with numerous Eligible Plaintiffs we were able to reach.



### **G. Responses – Written and Verbal**

As indicated above, the response forms included in the mailing offered the plaintiffs choices of how to proceed. One category offered Special Counsel assistance. Others offered opt-in, opt-out, and discontinuance-of-action choices. (The forms also asked for insertion of their “best” contact information. This provided us with new numbers and alternative channels of communication).

In addition, these choices were discussed in our substantive telephone discussions and during in-person meetings. Thus, Eligible Plaintiffs’ expressed wishes were recorded by Project team members whether they were expressed via written response forms or personal meetings or telephone conversations. A log of contacts/responses was kept for each Eligible Plaintiff. If no response was received that, too, was noted. A small number of inconsistencies occurred because some plaintiffs marked two boxes (e.g., opt out and discontinue) or because their telephonic expression of choice differed from the one on the written form. These discrepancies, among others, effected minor changes in the totals for each category.

The following are general results from the responses we received, both written and verbal:

- Only Requested Assistance via Form: 18
- Only Requested Assistance via Toll-Free  
phone call or E-Mail: 35
- Written Opt In - 26
- Verbal Opt In - 18
- Written Opt Out - 20
- Verbal Opt Out - 9

- Written Discontinue - 18
- Verbal Discontinue - 29

#### Inconsistent Responses

- 2 said Discontinue but selected "opt out" on the response form.
- 1 said "opt out" but selected "discontinue" on the form.

The inconsistent responses are in addition to the numbers listed above. Thus, depending on which category the response is allocated, that tally will increase.

Melding the written and verbal responses (and crediting the inconsistencies to the written version) yields the following totals:

- Only requests for Special Counsel assistance: 53
- Opt Ins: 44
- Opt Outs: 31
- Discontinuances: 47

[Note: In addition to the foregoing, we received three (3) written response forms on December 21, 2010 which is after the December 17 deadline. Two of those were "opt-outs." One was inconsistent by checking both "opt out" and "discontinue" boxes.]

Not counting the Requests for Special Counsel Assistance (but including the three (3) late written responses), some 125 Eligible Plaintiffs were assisted in expressing a choice.

### Conclusion

In the time frame between the Court's assignment on November 24 and December 17, 2010, nearly one-quarter of non-responsive Eligible Plaintiffs expressed a decision choosing how they wished to proceed with regard to the SPA. A significant number communicated with Special Counsel's Project team and availed themselves of assistance. As suggested in the Court's Order of November 24, a large number of Eligible Plaintiffs who did not opt in were frustrated and angry regarding the litigation process, the value of their anticipated settlement offer and for other reasons. Additionally, a significant number expressed feeling overwhelmed by the complexity of their options and the difficulty of making a decision. Contacts with Special Counsel's lawyer team appeared to assuage some of these individuals' feelings and helped to restore to some further communication with their attorneys.

We received excellent and unrestricted cooperation and assistance from Mr. Groner and Mr. LoPalo, members of plaintiffs' law firm.

If additional information is needed we can refer to the logs and records for each plaintiff and provide it.

M. Hoenig  
December 21, 2010



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Michael Hoenig  
Direct Line: (212) 471-8530  
mhoenig@herzfeld-rubin.com

December 7, 2010

Re: **Special Counsel Assistance**  
**WTC Litigation**

Dear Eligible Plaintiff:

I write to you as independent Special Counsel appointed by Hon. U.S. District Court Judge Alvin K. Hellerstein of the Southern District of N.Y. who presides over the World Trade Center (WTC) litigation.

As you may know, a court-approved settlement has been concluded between Eligible Plaintiffs and certain principal defendants. This is called the "Settlement Process Agreement" (SPA). An overwhelming number of Eligible Plaintiffs have opted-in to the SPA, more than 95% overall and even higher in certain injury categories.

Some Eligible Plaintiffs, however, have not yet opted in to accept the settlement offer. As to those, Judge Hellerstein has concluded that in a large litigation such as this certain factors may interfere with individual litigants' needs for a calm, deliberate evaluation of their best interests. He has decided that those individual Eligible Plaintiffs should have an opportunity to evaluate their rights and interests with the help of neutral Special Counsel, to arrive at an informed decision regarding their best interests. Accordingly, Judge Hellerstein has appointed me to act as Special Counsel and, together with attorneys and paralegals at this law firm, to help you arrive at an informed decision.

I stress three factors of importance: (1) we are **Independent** Special Counsel; (2) our sole purpose is to **help** those Eligible Plaintiffs who want assistance to make an informed decision; and (3) we are available to help for only a narrow, brief period, **until mid-December**, when our assignment expires.

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Therefore, you have to let us know ASAP if you want our help. To make things easier for you in expressing your wishes to us immediately, we have done the following:

- We have provided a stamped, self-addressed envelope which you should mail back to us Immediately containing the simple form that expresses your wishes;
- We provide a toll-free telephone number for you to call and express your wish for assistance: (877) 586-1992;
- We provide, for those using computers, an e-mail address where you can express your wish for assistance: WTC@Herzfeld-Rubin.com
- We provide a simple form that you should return immediately expressing your wishes. Just check the box applicable to your decision on whether to request Special Counsel's assistance or another choice, sign the form, print your name under your signature, insert the date and mail it back in the enclosed envelope. If a derivative claim is also involved (for example, a claim by a spouse of the injured party), both Eligible Plaintiffs should sign.

Again, we are independent Special Counsel; we are here to help inform you so that you can make a decision in your best interests; and time is of the essence! Please act quickly.

Sincerely,



Michael Hoenic

MH:ph  
Enclosure

**INDEPENDENT SPECIAL COUNSEL ASSISTANCE**

Dear Mr. Hoenig:

In response to your letter offering assistance as Special Counsel, the following is my choice:

- ☐ I would like to have the assistance of independent Special Counsel to help me make an informed decision.
- ☐ I do not need or want Special Counsel's assistance but have decided to opt in to the settlement. I understand I have to complete my paperwork and send it to my counsel immediately to opt in and accept the settlement.
- ☐ I do not need or want Special Counsel's assistance. I consent to discontinuance of my lawsuit.
- ☐ I do not need or want Special Counsel's assistance and have decided to opt out of the settlement.

The best way to reach me is via:

- ☐ Address: \_\_\_\_\_
- ☐ Telephone: \_\_\_\_\_
- ☐ E-Mail: \_\_\_\_\_

Dated: December \_\_\_\_, 2010

Very truly yours,

\_\_\_\_\_  
\_\_\_\_\_